



## **II. Proposed Claim Constructions for Disputed Claim Terms, Phrases, or Clauses**

Pursuant to P.R. 4-3(b), the parties have identified, in the attached Plaintiffs' Exhibit A and Defendants' Exhibit B, their proposed constructions for disputed claim terms, phrases, and clauses for the '775 and '239 patents, as well as the citations to the patent specifications, prosecution histories, and references incorporated by reference by the patents (intrinsic evidence) that the parties intend to rely on to support or oppose the proposed constructions. The parties also identify in Exhibits A and B the extrinsic evidence that the parties intend to rely on to support or oppose the proposed constructions.

The claim constructions proposed and/or agreed upon by Defendants in Exhibit B are offered without prejudice to Defendants' arguments relating to indefiniteness as set forth in their disclosures under P.R. 3-3 and 3-4.

## **III. Anticipated Length of Time Necessary for the Claim Construction Hearing**

The parties anticipate that three hours will be necessary for the claim construction hearing.

## **IV. Identification of Witnesses**

The parties do not intend to call live witnesses at the Claim Construction Hearing. Plaintiffs intend to submit a declaration by Dr. Gregory Adams, and a summary of Dr. Adams's proposed testimony is attached as Plaintiffs' Exhibit C, pursuant to P.R. 4-3(d). Defendants intend to submit a declaration by Dr. James Marks, and a summary of Dr. Marks's proposed testimony is attached as Defendant's Exhibit D, pursuant to P.R. 4-3(d).

The parties have agreed to meet and confer promptly after submission of this filing to discuss whether expert depositions concerning claim construction will be necessary.

**V. Other Issues**

(A) Plaintiffs intend to submit a technology tutorial in the form of a DVD prior to the February 26, 2009 Claim Construction Hearing. Defendants may include technology tutorials and/or demonstrative exhibits relating thereto in their respective claim construction briefs. Defendants may also submit demonstrative exhibits relating to a technology tutorial before the claim construction hearing. Each party reserves the right to lodge appropriate objections to the other party's tutorial and related demonstrative exhibits. The parties are unaware of any other issues that should be discussed at a prehearing conference before the Claim Construction Hearing.

(B) The parties have not agreed to jointly approach the Court to request an enlargement of the page limits for the Claim Construction Briefs required by P.R. 4-5. Defendants, however, reserve the right to do so if it deems necessary.

Dated: September 26, 2008

Respectfully submitted,

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